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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-190517

DATE: November 18, 1977

MATTER OF: Plastron Corporation

DIGEST:

IFB provision reserved to contracting officials right to make award on any or all items and allowed bidders to restrict bids on items to consideration for award in aggregate with other items. Protest filed after bid opening that, based on procurement history of item, provision improperly limited competition is untimely and will not be considered on its merits.

Plastron Corporation (Plastron) protests the award to Crown Supply Company (Crown) of item 48 under invitation for bids (IFB) No. 0409-AA-73-0-7-KM, issued by the Government of the District of Columbia for food service disposable items.

Plastron, which manufactures item 48, and whose product was bid by Kahn Paper Company, states:

" * * * over the years bidders have complained to the District of Columbia because of the fact that the product specified in Item 48 was included as a 'aggregate award item' with the products specified in Items 49 through 51. The problem is that, while a number of companies manufacture the food service trays specified in Item 48, only Amoco manufactures the products in Items 49 through 51. Thus, by including all of these products in an 'aggregate award group,' the District of Columbia precluded, with respect to Item 48, consideration of products manufactured by firms other than Amoco.

"In an apparent attempt to remedy this situation, in the current Invitation the District removed Item 48 from its prior aggregation — now, only Items 49 through 51 are included in the aggregate award group. * * *

The present IFB provided that the District of Columbia reserved the right to make award "on all items or on any of the items according to the best interests of the District," and allowed a bidder to

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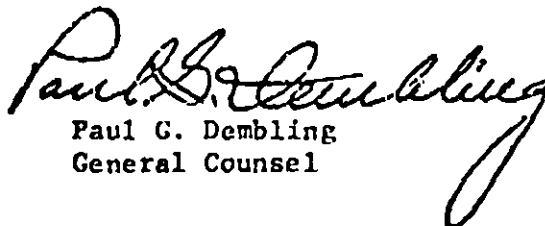
restrict its bid to consideration for award in the aggregate only. Although Plastron was the low bidder on item 48, award was made to Crown, which bid the Amoco products for items 49 through 51 and restricted its bid on item 48 to consideration in the aggregate with items 49 through 51. Plastron argues:

" * * * Since only Amoco makes the products specified in all four of these Items * * * this procedure again resulted in a sole source procurement of Amoco products.

" * * * this combination of the provisions of the Invitation and the restrictions of Crown's bid necessarily prevented free and open competition, and served no governmental purpose other than the obviously invalid one of limiting the scope of effective bidding to Amoco products."

Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977) (Procedures), requires that protests based upon alleged improprieties in an IFB which are apparent prior to bid opening must be filed by that time. Here, bidders were aware of the bidding and award possibilities raised by the protested provision upon receipt of the solicitation, particularly in view of the procurement history of the item as described by Plastron. In this connection, we do not consider it relevant that Plastron did not know until bids were opened that Crown would actually restrict its bid as authorized.

Accordingly, the protest, filed after bid opening, is untimely under our Procedures and will not be considered on its merits.


Paul G. Dembling
General Counsel